

STATE OF TEXAS § INTERLOCAL AGREEMENT FOR SURVEY
 § AND ANALYSIS OF AREAS TO BE CONSIDERED
COUNTY OF BEXAR § FOR QUIET ZONE DESIGNATION

This Interlocal Agreement (the "Agreement") is entered into by and between the City of Olmos Park, a Texas Municipal Corporation ("Olmos Park") acting by and through its City Manager, passed and approved by the City of Olmos Park City Council on the 15th day of January, 2009, as evidenced by the passage of a duly authorized Resolution, No. 2009-01; and the City of San Antonio, a Texas Municipal Corporation ("San Antonio"), acting by and through its City Manager, passed and approved by the City Council of the City of San Antonio, on the _____ day of _____, 2009, by Ordinance No. 2009- ____ - ____ - ____.

WITNESSETH

WHEREAS, the parties to this Agreement are Texas Municipal Corporations, and desire to enter into this Agreement in accordance with the provisions of the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code; and

WHEREAS, Olmos Park is requesting the assistance of San Antonio in the establishment of a railroad quiet zone on Union Pacific Railroad track near Olmos Park; and

WHEREAS, certain railroad crossings on Union Pacific track lie within the jurisdictional boundaries of San Antonio; and

WHEREAS, Olmos Park and San Antonio believe it is in the best interest of both cities to provide residents of both cities with a quiet zone; **NOW THEREFORE:**

In consideration of the mutual covenants and for other good and valuable consideration, the Parties agree as follows:

ARTICLE I. PURPOSE

1.1 This Interlocal Agreement memorializes the agreement between Olmos Park and San Antonio regarding the commitment of each City to study the feasibility of a railroad quiet zone at four crossings in San Antonio, near Olmos Park. This Agreement formalizes the commitment of each City toward conducting a traffic study, holding one or more town hall meetings as may be necessary, and providing for analysis of alternatives and recommending appropriate safety measures for the quiet zone project. In addition, it reflects the agreement of San Antonio and Olmos Park to assure mutual consultation on any future decision regarding selection of safety measures, as well as the future decision on the establishment of a railroad quiet zone.

ARTICLE II. TERM

2.1 The term of this Agreement is for twelve months, beginning on the date of the City of San Antonio's actual receipt of grant funds, not less than \$30,000.00, which are estimated to be adequate to meet the obligations of San Antonio contained in this Agreement. The Parties may amend and extend this Agreement for three additional twelve month terms.

2.2 This Agreement shall terminate in the event sufficient funds are not appropriated by the City of Olmos Park City Council to meet Olmos Park's obligations under this Agreement during any fiscal year.

ARTICLE III. CITY OF SAN ANTONIO'S COMMITMENT

3.1 San Antonio shall provide the following services in accordance with applicable federal, state, municipal laws, and other laws, codes, ordinances, rules and regulations, whether same are in existence on the execution date of this Agreement or become effective during the term of this Agreement.

3.1.1 Traffic study – San Antonio will conduct a traffic survey of the vicinity of the crossings proposed for a quiet zone. This survey will assess at a minimum traffic count, traffic flow, and feasibility of possible modifications to existing infrastructure to meet federal requirements for a quiet zone. The four crossings are identified in Attachment 1.

3.1.2 Town hall meetings – San Antonio may conduct a town hall meeting with citizens of San Antonio and Olmos Park, and lead informational discussions for residents in the affected area(s).

3.1.3 Analysis – San Antonio will provide a written analysis of the traffic study to include at a minimum, the feasibility and location of modifications necessary for a railroad quiet zone.

3.1.4 Alternatives – San Antonio will provide at least two (2) alternatives for creating railroad quiet zones within the jurisdictional boundaries of San Antonio, in places where railroad noise impacts Olmos Park.

3.2 San Antonio agrees to provide the services described in this Article III, subject to the provisions of Article V.

3.3 Fees incurred for additional services not authorized by the City of Olmos Park City Council in this proposal, such as analysis or traffic study on other crossings that may be added to the proposed quiet zone, shall be paid by the City of San Antonio.

ARTICLE IV. CITY OF OLMOS PARK'S COMMITMENT

4.1 Olmos Park shall be available for consultation prior to, during, and after any Town hall meeting or informational meeting with citizens of San Antonio and Olmos Park.

4.2 An Olmos Park representative shall assist San Antonio in securing a location for a Town hall meeting if one is not available in San Antonio.

4.3 As a general law city, Olmos Park cannot expend public funds for a project situated outside its jurisdiction. Olmos Park will not be responsible to pay for services not authorized in advance to be paid by Olmos Park. Arrangements for payment for services through third party grantors of non-public funds are exclusively the responsibility of the City of Olmos Park.

ARTICLE V. PAYMENT FOR SERVICES

5.1 San Antonio stipulates that payment for the services described in Article III shall be made to San Antonio from third-party grants of non-public funds. It is expressly understood and agreed by San Antonio and Olmos Park that San Antonio's obligations under this Agreement are contingent upon San Antonio's actual receipt of grant funds, not less than \$30,000.00, which are estimated to be adequate to meet the obligations of San Antonio contained in this Agreement.

5.2 Upon passage by the San Antonio City Council of an ordinance approving this agreement, San Antonio will accept contributions for funding the services described in Article III.

5.3 Any party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party

ARTICLE VI. RECORDS RETENTION

6.1 San Antonio shall retain any and all documents produced as a result of services provided under this Agreement for a period of four years (the "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving, or concerning this documentation or the services provided under this Agreement, San Antonio shall retain the records until the resolution of such litigation or other such questions.

ARTICLE VII. TERMINATION

7.1 For the purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article I. Term, or earlier termination pursuant to any of the provisions of this Agreement.

7.2 Whenever either party, in its discretion, deems it to be in that Party's best interest, it may terminate this Agreement for convenience. Such termination shall be effective thirty days after

the terminating Party delivers notice of termination for convenience to the other party. The Parties shall have no additional responsibility to one another after termination of this Agreement.

7.3 Notwithstanding the above, in the event Olmos Park terminates this Agreement, and San Antonio has incurred costs not yet paid for through third-party grants, this Agreement shall remain in force until San Antonio has been paid all costs contemplated in this Agreement.

ARTICLE VIII. INDEMNIFICATION

8.1 Olmos Park and San Antonio acknowledge that they are Texas Municipal Corporations and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, et. seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury, or death.

ARTICLE IX. INSURANCE

9.1 Olmos Park and San Antonio each maintain a self-insurance fund for general liability and workers compensation claims and causes of action to meet their statutory obligations.

ARTICLE X. NOTICES

10.1 All notices to be given under this Agreement shall be in writing and shall either be personally served against a written receipt for the notice or given by certified mail or registered mail, return receipt requested, postage prepaid and addressed to the proper party at the address which appears below or at such other address as the Parties may designate. All notices given by mail shall be deemed to have been given three days after the time of deposit in the United States mail and shall be effective from such date.

If to Olmos Park:

City Manager
City of Olmos Park
119 W. El Prado
San Antonio, TX 78212

With a copy to:

Jeff Judson
Olmos Park City Council
205 East Wildwood
Olmos Park, TX 78212

If to San Antonio:

City Manager
City of San Antonio
P.O. Box 893366
San Antonio, TX 78283-3966

With a copy to:

Joseph Marsilio
City of San Antonio
Public Works Department
P.O. Box 893366
San Antonio, TX 78283-3966

ARTICLE XI. AMENDMENTS

11.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms of this Agreement, shall be effected by amendment, in writing, executed by both San Antonio and Olmos Park, and subject to approval by the San Antonio City Council as evidenced by passage of an ordinance, and the Olmos Park City Council, as evidenced by passage of an ordinance or resolution.

ARTICLE XII. SEVERABILITY

12.1 If any clause or provision of this Agreement is held invalid, illegal, or unenforceable under present or future federal, state, or local laws, including but not limited to the City Charter, City Code, or Ordinances of the City of Olmos Park, Texas, and the City of San Antonio, Texas, then and in that event it is the intention of the parties to this Agreement that such invalidity, illegality, or unenforceability shall not affect any other clause or provision of this Agreement, and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained in this Agreement.

12.2 It is the intention of the parties to this Agreement that in lieu of each clause or provision in this Agreement that is invalid, illegal or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

ARTICLE XIII. DESIGNATION OF REPRESENTATIVES

13.1 The City of San Antonio Public Works Director, or his designee, is San Antonio's designated representative under this Agreement, and shall be the primary point of contact for Olmos Park.

13.2 The City Manager, or her designee, is Olmos Park's designated representative under this Agreement, and shall be the primary point of contact for San Antonio.

ARTICLE XIV. LAW APPLICABLE

14.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED UNDER THIS AGREEMENT ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

14.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in Bexar County, Texas.

ARTICLE XV. LEGAL AUTHORITY

15.1 The signer of this Agreement for each party represents, warrants, assures and guarantees that he/she has full legal authority to execute this Agreement on behalf of Olmos Park or San Antonio, and to bind Olmos Park or San Antonio, respectively, to all of the terms, conditions, provisions and obligations contained in this Agreement.

ARTICLE XVI. PARTIES BOUND

16.1 This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for in this Agreement.

ARTICLE XVII. ASSIGNMENT

17.1 Neither party may assign its rights, privileges, or obligations under this Agreement, in whole or in part, without the written consent of the governing body of the other party. Any attempt to assign without such approval shall be void.

ARTICLE XVIII. COMPLIANCE WITH LAWS AND ORDINANCES

18.1 The parties to this Agreement agree to comply with all federal, state, municipal, local laws and ordinances, rules and regulations applicable to the work or services to be performed under this Agreement.

ARTICLE XIX. ENTIRE AGREEMENT

19.1 This Agreement, together with its authorizing Ordinances and its exhibits, if any, constitute the final and entire Agreement between the parties to this Agreement and contains all of the terms and conditions agreed upon. No other Agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties to this Agreement, unless same is in writing, dated subsequent to the date of this Agreement and duly executed by all parties, in accordance with Article XI, Amendments. This Agreement shall supersede any and all prior written and oral agreements between San Antonio and Olmos Park regarding railroad quiet zones.

ARTICLE XX. MULTIPLE COUNTERPARTS

20.1 This Agreement may be executed in separate identical counterparts by the parties to this Agreement and each counterpart, when so executed and delivered, will constitute an original instrument, and all such separate identical counterparts will constitute but one and the same instrument.

This Interlocal Agreement for Survey Analysis of Areas to be Considered for Quiet Zone Designation is Executed and Agreed to by the parties below, effective as of the date indicated in Section 2.1 above, as evidenced by a letter of receipt by the City of San Antonio to the Olmos Park.

CITY OF SAN ANTONIO

Sheryl L. Sculley
City Manager

ATTEST/SEAL:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Michael D. Bernard
City Attorney

CITY OF OLMOS PARK

Amy M. Buckert
City Manager

ATTEST/SEAL:

Celia M. DeLeon
City Clerk



Attachment 1

Location of Railroad Crossings for Traffic Study

